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SENATE BILL 238

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Richard M. Romero

AN ACT

RELATING TO MUNICIPALITIES; ENACTING THE NEIGHBORHOOD
IMPROVEMENT DISTRICT ACT; PROVIDING FOR THE CREATION OF
NEIGHBORHOOD IMPROVEMENT DISTRICTS; PROVIDING FOR SPECIAL
ASSESSMENTS AGAINST PROPERTY IN A DISTRICT TO FUND IMPROVEMENTS
AND THE MAINTENANCE OF IMPROVEMENTS; PROVIDING FOR THE
INVESTMENT OF MONEY COLLECTED FROM THE ASSESSMENTS; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 13 of this act may be cited as the "Neighborhood
Improvement District Act".

Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the
Neighborhood Improvement District Act is to empower
neighborhoods to take initiative in the commencement,

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1 acquisition, construction or maintenance of those specific
2 improvements desired by the neighborhoods and that the
3 neighborhoods agree to finance by a special assessment against
4 the property benefited by the improvements.

5 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
6 Neighborhood Improvement District Act:

7 A. "council" means the governing body of the
8 municipality in which a district or a proposed district is
9 located;

10 B. "district" means a neighborhood improvement
11 district organized or proposed to be organized pursuant to the
12 provisions of the Neighborhood Improvement District Act;

13 C. "enabling ordinance" means an ordinance enacted
14 by a council pursuant to Section 5 of the Neighborhood
15 Improvement District Act that enables neighborhood improvement
16 districts to be created in the municipality and prescribes the
17 procedures, conditions and standards to be followed in creating
18 and operating districts;

19 D. "improvement" means a facility, service,
20 activity or project that will benefit a district and is
21 authorized or approved by ordinance of the council.

22 "Improvements" may include:

23 (1) services and activities, such as security
24 services, promotion of public events, concerts in public areas,
25 economic development promotions, street and sidewalk cleaning,

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1 trash removal and graffiti removal;

2 (2) public facilities, such as pocket parks,
3 open spaces, hiking and biking trails, public art, walkways,
4 pathways, public lands, public buildings, ponds, parking
5 facilities, benches, booths, kiosks, display cases, pedestrian
6 shelters, informative signs, trash receptacles, public
7 restrooms, decorations and banners;

8 (3) transportation-related facilities or
9 projects, such as streets, roads, bridges, curbs, gutters,
10 sidewalks, median strips, planting strips, speed bumps and
11 street lights; and

12 (4) the beautifying, landscaping or
13 hardscaping of any of the improvements described in Paragraphs
14 (1) through (3) of this subsection, including the use of
15 earthworks, structures, lands and other water features, plants,
16 trees and related water delivery systems;

17 E. "mayor" means:

18 (1) the mayor of a municipality that has a
19 mayor-council form of government; or

20 (2) the governing body of a municipality that
21 does not have a mayor-council form of government; and

22 F. "valuation increment funding" means a funding
23 mechanism based on an assessment applied to the increased
24 valuation of a parcel of property over a base value as
25 established in an enabling ordinance.

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1 Section 4. ~~[NEW MATERIAL]~~ ONLY PUBLIC IMPROVEMENTS
2 AUTHORIZED. -- All improvements commenced, acquired, constructed
3 or maintained pursuant to the Neighborhood Improvement District
4 Act shall be on a public right of way or public easement;
5 provided, however, that an improvement may be located on
6 private property if it directly and primarily benefits a public
7 right of way or public easement.

8 Section 5. ~~[NEW MATERIAL]~~ ENABLING ORDINANCE REQUIRED. -- A
9 neighborhood improvement district may be created in a
10 municipality only if the council has enacted an enabling
11 ordinance specifying the procedures, conditions and standards
12 to be used in creating and operating a neighborhood improvement
13 district. The enabling ordinance:

14 A. shall specify the procedures, conditions and
15 standards, in addition to those required in the Neighborhood
16 Improvement District Act, to be followed and applied in the
17 creation of a neighborhood improvement district, including:

- 18 (1) acceptable purposes for a neighborhood
19 improvement district;
- 20 (2) time frames for submitting petitions,
21 studying the feasibility of a proposed district, holding public
22 hearings and reaching a final decision regarding the creation
23 of a district;
- 24 (3) information required in a petition
25 proposing a district that will enable the council to reach a

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1 decision on the necessity and benefits of the district;

2 (4) standards and procedures for determining
3 the geographical areas for neighborhood improvement districts;
4 and

5 (5) additional factors to be addressed in a
6 study of a proposed district;

7 B. shall specify and delineate the responsibilities
8 of a management committee of a neighborhood improvement
9 district in establishing and operating a district and the
10 responsibilities of the municipality concerning the district;

11 C. may, in addition to the petition method of
12 creating a neighborhood improvement district, provide for the
13 creation of a district by a land developer who has filed a
14 final plat; provided that, upon the sale of more than fifty
15 percent of the lots within the development, the management
16 committee shall be appointed as provided in Section 9 of the
17 Neighborhood Improvement District Act;

18 D. may, as an alternative to Section 9 of the
19 Neighborhood Improvement District Act, provide that the
20 council, rather than a management committee, shall manage a
21 neighborhood improvement district and, if so, may deduct
22 management costs from district revenue;

23 E. may, pursuant to Subsection B of Section 8 of
24 the Neighborhood Improvement District Act, provide for
25 valuation increment funding and provide how revenue accruing

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1 through the valuation increment method shall be expended;

2 F. may provide that a portion of the revenue
3 received from the creation of a neighborhood improvement
4 district, including revenue from assessments, valuation
5 increment revenues or increased gross receipts tax revenues, be
6 expended to improve low-income areas of the municipality;

7 G. may provide for improvements to be jointly
8 commenced, acquired, constructed or maintained by both a
9 neighborhood improvement district and the municipality;

10 H. may provide for improvements to be owned by the
11 municipality, by the district or jointly between the
12 municipality and district;

13 I. may provide for assessments of a neighborhood
14 improvement district to include a charge to establish a reserve
15 fund for the purpose of making emergency expenditures
16 consistent with the purpose of the district;

17 J. shall provide procedures for collecting
18 assessments from owners of parcels within a neighborhood
19 improvement district and procedures for foreclosing on the
20 property of delinquent payers; and

21 K. may contain such other procedures, conditions or
22 standards for neighborhood improvement districts as are
23 consistent with the provisions of the Neighborhood Improvement
24 District Act.

25 Section 6. [NEW MATERIAL] NEIGHBORHOOD IMPROVEMENT

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1 DISTRICT-- CREATION-- PETITION-- STUDY. --

2 A. The majority of the owners of the taxable
3 parcels of real property within a proposed district, exclusive
4 of real property owned by the United States, the state or any
5 of its subdivisions, may petition the council for the creation
6 of a district. The petition shall include:

7 (1) the proposed boundaries of the district;

8 (2) a general description of the initial
9 improvements to be commenced, acquired or constructed by the
10 proposed district;

11 (3) the estimated costs of the proposed
12 improvements;

13 (4) the estimated initial annual assessment
14 and the four subsequent annual assessments against each parcel
15 within the proposed district;

16 (5) the maximum amount of benefit estimated to
17 be conferred on each parcel of land lying within the proposed
18 district; and

19 (6) such other information as identified in
20 the enabling ordinance as necessary for the proper evaluation
21 of the petition.

22 B. After receipt of a petition by the council, the
23 mayor shall cause to be prepared and submitted to the council a
24 study of the proposed district. The study shall include:

25 (1) the estimated costs of the proposed

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1 improvements;

2 (2) considering the property that will
3 primarily benefit from the improvements, a conclusion of
4 whether the proposed boundaries of the district are reasonable
5 and, if not, a recommendation for alternative district
6 boundaries;

7 (3) the estimated initial annual assessment
8 and the four subsequent annual assessments against each parcel
9 within the district;

10 (4) additional considerations and information
11 required by the enabling ordinance; and

12 (5) such other information as the council
13 needs in order to determine whether the creation of the
14 district is in the best interests of the residents and property
15 owners of the district.

16 Section 7. [NEW MATERIAL] NEIGHBORHOOD IMPROVEMENT
17 DISTRICT-- CREATION-- PUBLIC HEARING. --

18 A. After receipt of the study pursuant to Section 5
19 of the Neighborhood Improvement District Act, the council shall
20 hold a public hearing on the proposed district.

21 B. Notice of the hearing shall be mailed to
22 affected real property owners within the proposed district and
23 reasonably ascertainable residents of the proposed district and
24 other interested persons. In addition, notice shall be
25 published once each week for three successive weeks in a

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1 newspaper of general circulation in the municipality in which
2 the proposed district lies, with the last publication being at
3 least three days before the date of the hearing. The notice
4 shall contain:

5 (1) the time and place of the hearing;
6 (2) the initial improvements proposed for the
7 district;

8 (3) the estimated cost of the improvements;
9 (4) the proposed boundaries of the district;

10 and

11 (5) a preliminary estimate of the initial
12 assessments that will be made against each parcel of real
13 property in the district.

14 C. A resident, real property owner or other
15 interested person shall be given the opportunity to appear at
16 the public hearing and present views on the creation of the
17 district as proposed in the notice.

18 D. Upon completion of the hearing, the council
19 shall adopt an ordinance creating the district or shall reject
20 the creation of the district.

21 E. If the creation of a district is rejected by the
22 council, another petition for creation of the district shall
23 not be submitted pursuant to the Neighborhood Improvement
24 District Act within twelve months following the rejection.

25 Section 8. [NEW MATERIAL] NEIGHBORHOOD IMPROVEMENT

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1 DISTRICT-- CREATION-- ORDINANCE. --

2 A. An ordinance creating a district shall be
3 consistent with the enabling ordinance and shall include:

4 (1) a list of the initial improvements to be
5 provided by the district;

6 (2) the cost of the initial improvements;

7 (3) a description of the real property
8 included in the district;

9 (4) the assessment method to be used to
10 finance improvements of the district;

11 (5) the amount of the initial assessment to be
12 imposed upon each real property owner and an estimate of
13 assessments for the subsequent four tax years;

14 (6) a description of how the district will be
15 managed and, if the district is to be managed by a managing
16 committee, the terms of members, method of appointment,
17 reporting requirements and other duties of the management
18 committee; and

19 (7) a description of the methods to be used to
20 account for district costs and revenues and how district
21 revenues will be disbursed to the district for improvements and
22 the maintenance of improvements.

23 B. If permitted in the enabling ordinance, the
24 ordinance may provide for valuation increment funding of the
25 neighborhood improvement district pursuant to the following

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1 procedures:

2 (1) upon approval of a neighborhood
3 improvement district, the municipality shall notify the county
4 assessor and the taxation and revenue department of the
5 approval and of the identification of the parcels of real
6 property within the district subject to taxation under the
7 Property Tax Code;

8 (2) upon receipt of notification pursuant to
9 Paragraph (1) of this subsection, the county assessor and the
10 taxation and revenue department shall identify the parcels of
11 property within the neighborhood improvement district within
12 their respective valuation jurisdictions and at the time tax
13 rates are certified under the Property Tax Code shall certify
14 to the county treasurer the net taxable value of the property
15 as of January 1 of the year in which the notification was made.
16 This certified value is the "base value" for the distribution
17 of property tax revenues authorized by the Property Tax Code
18 under the valuation increment method;

19 (3) the amount by which the general property
20 tax revenue received from the tax on property within a
21 neighborhood improvement district exceeds that which would have
22 been received by application of the same rates to the base
23 value before inclusion in the neighborhood improvement district
24 shall be credited to the municipality and used as provided in
25 the enabling ordinance and the ordinance creating the

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1 neighborhood improvement district. The remaining revenue shall
2 be distributed to participating units of government as
3 authorized by the Property Tax Code; and

4 (4) the procedures and methods specified in
5 this subsection shall be followed annually for an initial
6 period of five years following the date of notification of
7 inclusion of property as coming under the provisions of this
8 subsection and for any subsequent five-year periods that are
9 established by ordinance of the council.

10 Section 9. [NEW MATERIAL] MANAGEMENT COMMITTEE--
11 CREATION-- DUTIES. --

12 A. For a district with a management committee, the
13 committee shall be responsible for the operation of a district,
14 including the commencement, acquisition, construction or
15 maintenance of district improvements. The members of the
16 management committee shall be appointed pursuant to the
17 provisions of the enabling ordinance and the ordinance creating
18 the district; provided, however, that one member shall be
19 appointed by and represent the mayor and the remaining members
20 shall be real property owners or residents of the district.

21 B. The management committee shall prepare and file
22 annually with the council for its review and approval a budget
23 and progress report for the district.

24 C. The management committee shall administer all
25 improvements within the district.

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1 D. The management committee shall recommend the
2 annual assessment to be made by the council.

3 E. The management committee shall file annually
4 with the council a report of the district activities for the
5 preceding fiscal year, which report shall include a complete
6 financial statement setting forth its assets, liabilities,
7 income and operating expenses as of the end of the fiscal year
8 and the benefits of the district's program to the real property
9 owners of the district.

10 F. The management committee shall be a nonprofit
11 corporation created pursuant to the Nonprofit Corporation Act.

12 Section 10. [NEW MATERIAL] ADDITIONAL IMPROVEMENTS. --

13 A. The initial improvements authorized in the
14 ordinance creating the district may be commenced, acquired,
15 constructed or maintained by the management committee, and the
16 council may approve assessments for such improvements and the
17 maintenance thereof, including assessments for increased costs
18 necessary to adjust for inflation, to maintain an existing
19 level of service, to correct faults, to make repairs and to
20 meet future regulatory requirements.

21 B. Except as allowed in Subsection A of this
22 section, no additional improvements shall be made, no
23 additional costs shall be incurred and no additional
24 assessments shall be issued by the district unless a petition,
25 signed by a majority of the owners of the taxable parcels of

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1 real estate within the district and requesting the additional
2 improvements or costs and the associated assessments, is filed
3 with the council.

4 Section 11. [NEW MATERIAL] ANNUAL ASSESSMENT-- SPECIAL
5 ACCOUNT-- DISTRIBUTION. --

6 A. The council, upon recommendation of the
7 management committee, may periodically assess a neighborhood
8 improvement benefit fee upon all real property, exclusive of
9 any real property owned by the United States or the state or
10 any of its political subdivisions, located within the district.
11 The council may make reasonable classifications regarding real
12 property owners located within the district but the assessment
13 shall be based on the taxable valuation distributed by the
14 county assessor. The assessment shall be collected by the
15 treasurer of the county in which the district is located and
16 shall be in addition to any other municipal-imposed license
17 fees or other taxes, fees or other charges assessed or levied
18 for the general benefit and use of the municipality.

19 B. All money received by the municipality from the
20 district assessment shall be held in a special account and
21 distributed as provided in the enabling ordinance and the
22 ordinance creating the district.

23 C. The money held for the benefit of the district
24 shall be distributed to the management committee pursuant to rules
25 and guidelines established by the council.

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1 Section 12. [NEW MATERIAL] ASSESSMENTS--TERMS OF PAYMENT--
2 LIENS-- FORECLOSURE. --

3 A. The council shall by ordinance:

4 (1) establish the time and terms of paying the
5 neighborhood improvement benefit fee or installments on the fee;

6 (2) set any rate or rates of interest upon
7 deferred payments of the fee, which shall commence from the due
8 date as prescribed in the ordinance;

9 (3) fix penalties to be charged for delinquent
10 payment of an assessment;

11 (4) establish procedures and guidelines for the
12 classification of property for the fee;

13 (5) set a reasonable charge to recover the
14 municipality's expense for the assessment, collection and
15 administration of the fee; and

16 (6) provide for the control and investment and
17 order the expenditure of all money pertaining to the district.

18 B. The assessment, together with any interest or
19 penalty accruing to the assessment, is a lien upon the parcel of
20 land. The lien is coequal with the lien for property taxes.

21 C. Within sixty days after the due date for the
22 payment of an assessment, the mayor shall record in the office of
23 the county clerk a claim of lien for any unpaid amount due and
24 assessed against a parcel of land.

25 D. A parcel assessed shall not be relieved from the

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1 assessment or lien by the sale of the parcel of land for general
2 taxes or any other assessment. A delinquent assessment has the
3 effect of a mortgage and shall be foreclosed and sold in the
4 manner provided by law for the foreclosure of mortgages on real
5 estate.

6 Section 13. [NEW MATERIAL] DISTRICT REVIEW. -- The council
7 shall review each district every five years to determine whether
8 the district should remain in existence. If a majority of the
9 council decides that the purpose for which the district was
10 created has been served and that it is in the best interest of the
11 district, the council shall terminate the district. If upon
12 termination of a district there is an outstanding balance in the
13 district's account, the council shall expend or refund the balance
14 in a manner that benefits the real property owners in the
15 district.

16 Section 14. Section 6-10-10.1 NMSA 1978 (being Laws 1988,
17 Chapter 61, Section 2, as amended) is amended to read:

18 "6-10-10.1. SHORT-TERM INVESTMENT FUND CREATED-- DISTRIBUTION
19 OF EARNINGS-- REPORT OF INVESTMENTS. --

20 A. There is created in the state treasury the "short-
21 term investment fund". The fund shall consist of all deposits
22 from governmental entities and Indian tribes or pueblos that are
23 placed in the custody of the state treasurer for short-term
24 investment purposes pursuant to this section. The state treasurer
25 shall maintain a separate account for each governmental entity and

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1 Indian tribe or pueblo having deposits in the fund.

2 B. If a local public body is unable to receive payment
3 on public money at the rate of interest as set forth in Section
4 6-10-36 NMSA 1978 from financial institutions within the
5 geographic boundaries of the governmental unit, then a local
6 public finance official having money of that local public body in
7 his custody not required for current expenditure may, with the
8 consent of the appropriate local board of finance, if any, remit
9 some or all of such money to the state treasurer for deposit for
10 the purpose of short-term investment as allowed by this section.

11 C. Before local funds are invested or reinvested for
12 the purpose of short-term investment pursuant to this section, the
13 local public body finance official shall notify and make such
14 funds available to banks, savings and loan associations and credit
15 unions located within the geographical boundaries of their
16 respective governmental unit, subject to the limitation on credit
17 union accounts. To be eligible for such funds, the financial
18 institution shall pay to the local public body the rate
19 established by the state treasurer pursuant to a policy adopted by
20 the state board of finance for such short-term investments.

21 D. The local public body finance official shall
22 specify the length of time a deposit shall be in the short-term
23 investment fund, but in any event the deposit shall not be made
24 for more than one hundred eighty-one days. The state treasurer
25 through the use of the state fiscal agent shall separately track

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1 each such deposit and shall make such information available to the
2 public upon written request.

3 E. The state treasurer shall invest the short-term
4 investment fund as provided for state funds under Section 6-10-10
5 NMSA 1978 in investments with a maturity at the time of purchase
6 that does not exceed three hundred ninety-seven days. The state
7 treasurer may elect to have the short-term investment fund
8 consolidated for investment purposes with the state funds under
9 the control of the state treasurer; provided that accurate and
10 detailed accounting records are maintained for the account of each
11 participating entity and Indian tribe or pueblo and that a
12 proportionate amount of interest earned is credited to each of the
13 separate government accounts. The fund shall be invested to
14 achieve its objective, which is to realize the maximum return
15 consistent with safe and prudent management.

16 F. At the end of each month, all net investment income
17 or losses from investment of the short-term investment fund shall
18 be distributed by the state treasurer to the contributing entities
19 and Indian tribes or pueblos in amounts directly proportionate to
20 the respective amounts deposited in the fund and the length of
21 time the amounts in the fund were invested. The state treasurer
22 shall charge participating entities, Indian tribes and pueblos
23 reasonable audit, administrative and investment expenses to be
24 paid directly from their net investment income for the investment
25 and administrative services provided pursuant to this section.

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1 G. As used in this section, "local public body" means
2 a political subdivision of the state, including school districts
3 and post-secondary educational institutions.

4 H. In addition to the deposit of funds of local public
5 bodies, the state treasurer may also accept for deposit, deposit
6 and account for, in the same manner as funds of local public
7 bodies, funds of the following governmental entities if the
8 governing authority of the entity approves by resolution the
9 deposit of the funds for the short-term investment:

10 (1) the agricultural commodity commission
11 established under the Agricultural Commodity Commission Act;

12 (2) the Albuquerque metropolitan arroyo flood
13 control authority established under the Arroyo Flood Control Act;

14 (3) the business improvement district management
15 committee established under the Business Improvement District Act;

16 (4) the New Mexico community development council
17 established under the New Mexico Community Assistance Act;

18 (5) the governing authority of only special
19 districts authorized under Chapter 73 NMSA 1978;

20 (6) the board of trustees established under the
21 Economic Advancement District Act;

22 (7) the board of directors of a corporation or
23 foundation established under the Educational Assistance Act;

24 (8) a board of directors established under the
25 Flood Control District Act;

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1 (9) the New Mexico hospital equipment loan
2 council established under the Hospital Equipment Loan Act;

3 (10) the authority established under the
4 Industrial and Agricultural Finance Authority Act;

5 (11) the authority established under the Las
6 Cruces Arroyo Flood Control Act;

7 (12) the authority established under the Mortgage
8 Finance Authority Act;

9 (13) the authority established under the
10 Municipal Mortgage Finance Act;

11 (14) the authority established under the Public
12 School Insurance Authority Act;

13 (15) the authority established under the Southern
14 Sandoval County Arroyo Flood Control Act;

15 (16) a board of trustees established under the
16 Special Hospital District Act;

17 (17) the authority established under the
18 New Mexico Finance Authority Act; [~~and~~]

19 (18) the corporation established under the Small
20 Business Investment Act; and

21 (19) a neighborhood improvement district
22 management committee established under the Neighborhood
23 Improvement District Act.

24 I. In addition to the deposit of funds of local public
25 bodies, the state treasurer may also accept for deposit and

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1 deposit and account for, in the same manner as funds of local
2 public bodies, funds of any Indian tribe or pueblo in the state if
3 authorized to do so under a joint powers agreement executed by the
4 state treasurer and the governing authority of the Indian tribe or
5 pueblo under the provisions of the Joint Powers Agreements Act. "

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